

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDWARD DWAYNE ASHFORD,
CDC #T-69591,

Plaintiff,

vs.

JAMES TILTON, Secretary, Cal. Dept. of
Corrections & Rehabilitation; STUART J.
RYAN, Former Warden, Calipatria State
Prison;
GEORGE G. GIURBINO, Former Warden,
Calipatria State Prison; LARRY E.
SCRIBNER, Warden, Calipatria State Prison,

Defendants.

Civil No. 07-0147 JM (WMC)

**ORDER DISMISSING CIVIL ACTION
FOR FAILING TO PAY FILING FEES
PURSUANT TO
28 U.S.C. § 1914(a) AND FAILING
TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, a state prisoner currently incarcerated at Calipatria State Prison (“CAL”), in Calipatria, California, and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims the Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), and several Wardens at CAL violated his Eighth and Fourteenth Amendment rights by subjecting him to “numerous retaliatory racialized lockdowns.” (*See* Compl. ¶¶ 11, 21.) Plaintiff further alleges pendent state law claims in violation of the California Constitution. (*Id.* ¶ 24.) Plaintiff seeks declaratory and injunctive relief, as well as compensatory and punitive damages. (*Id.* at 15-16.)

///

///

I. Failure to Pay Filing Fee or Request IFP Status

Effective April 9, 2006, any party instituting a civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff has not paid the \$350 filing fee required to maintain this civil action, nor has he submitted a motion to proceed IFP pursuant to 28 U.S.C. § 1915(a).

II. Conclusion and Order

For the reasons set forth above, the Court hereby:

(1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

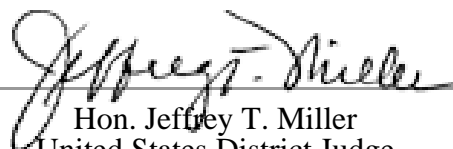
(2) **GRANTS** Plaintiff forty-five (45) days leave from the date this Order is filed to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

IT IS FURTHER ORDERED that:

(3) the Clerk of the Court shall mail Plaintiff the Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*," along with a copy of this Order. If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the Motion to Proceed IFP provided to him within forty-five (45) days, this action shall remain dismissed without prejudice and without further Order of the Court.

IT IS SO ORDERED.

DATED: February 9, 2007


Hon. Jeffrey T. Miller
United States District Judge